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Before the
Federal Communications Commission
Washington, DC 20554

SEP 18 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Verizon Telephone Companies)	WC Docket No. 02-237
)	
Section 63.71 Application to Discontinue)	
Expanded Interconnection Service)	
Through Physical Collocation)	

**OPPOSITION OF
NETWORK ACCESS SOLUTIONS CORPORATION**

Network Access Solutions ("NAS") hereby opposes the application filed by Verizon pursuant to Section 214 of the Communications Act for permission to revise certain Verizon policies applicable to what the company refers to as "interstate expanded interconnection services through physical collocation." In the application, Verizon requests authority to discontinue providing all new "expanded interconnection" arrangements under its interstate tariffs, with the result that all new arrangements of this type would be provided under Verizon's state tariffs. For existing arrangements, Verizon requests authority to give each subscribing carrier a choice: the carrier could choose either to make future payments for existing arrangements under the terms set forth in Verizon's state tariffs or it could continue paying under Verizon's FCC tariffs, except that Verizon would amend its FCC tariffs to raise the monthly price for the power that the carrier needs in order to operate the existing arrangements. The new price for power for an interstate expanded interconnection arrangement would be equal to the price that

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Verizon presently charges to provide power to operate an intrastate expanded interconnection arrangement.

DISCUSSION

The Commission should reject Verizon's application for three reasons. Each is discussed below.

I. The Commission Should Dismiss that Portion of Verizon's Application Requesting Authority to Terminate Its Provision of CLEC Collocation Arrangements Since Section 251(c)(6) of the Act, Not 214, Sets Forth the Procedure that Verizon Must Use to Request Permission to Terminate CLEC Collocation Arrangements

The Commission should dismiss that portion of the application which requests authority to discontinue providing interstate collocation arrangements to CLECs since Section 214 of the Act does not set forth the mechanism under which the Commission may authorize Verizon to discontinue providing these arrangements. While Verizon characterizes its application as applying to a single type of service, in fact it applies to two different types of service: (a) a service that Verizon provides to interexchange carriers, and (b) a collocation arrangement that Verizon provides to CLECs. Section 214 describes the mechanism by which Verizon may obtain authorization to terminate telecommunications service, but not other products. While NAS expresses no view about whether the expanded interconnection service that Verizon provides to an interexchange carrier is telecommunications service, the collocation arrangement that Verizon provides to a CLEC is not telecommunications service. A CLEC purchases a collocation arrangement from Verizon pursuant to the CLEC's interconnection agreement with Verizon. Section 252(a) of the Act requires that Verizon enter into interconnection agreements with CLECs, and Section 251(c)(6) requires that Verizon include provisions

in these agreements setting forth the terms under which collocation is provided. While Verizon's interconnection agreements with CLECs state that Verizon will provide collocation arrangements to the contracting CLECs on the same terms that it provides interconnection service to interexchange carriers, that fact does not convert a CLEC's collocation arrangement into a telecommunications service.

Although Section 214 does not set forth the mechanism under which the Commission may authorize Verizon to terminate a CLEC's collocation arrangements, Section 251(c)(6) does. If Verizon desires to terminate CLEC collocation arrangements, it should file that application under Section 251(c)(6) even if the FCC considers whether to permit Verizon to terminate interconnection service to interexchange carriers under Section 214.

Requiring Verizon to file its request to terminate CLEC collocation arrangements under Section 251(c)(6) is important since Verizon's burden of proof under Section 251(c)(6) is substantially higher than its burden of proof under Section 214. Section 214 requires that Verizon show that "neither the present nor future public convenience and necessity will be adversely affected" by terminating telecommunications service as proposed, whereas Section 251(c)(6) requires that Verizon demonstrate that its proposal to terminate a CLEC collocation arrangement is "just, reasonable, and nondiscriminatory." Verizon's present application does not even attempt to make the showing required by Section 251(c)(6).

II. Alternatively, the Commission Should Dismiss that Portion of Verizon's Application Requesting Authority to Increase the Price that CLECs Must Pay to Keep Existing Interstate Collocation Arrangements In Operation Since Section 214 of the Act Sets Forth the Procedure for Terminating Interstate Service Rather than Providing the Procedure to Increase the Price for an Existing Interstate Service Arrangement

Even if Section 214 established the mechanism by which Verizon could obtain Commission authorization to terminate CLEC collocation arrangements (which it does not as explained above), the Commission still should deny that portion of Verizon's application requesting permission to modify the manner in which it provides existing interstate collocation arrangements through an amendment to its interstate tariff that would increase the monthly price to provide the power necessary to operate those arrangements. Verizon requests that the Commission approve the amendment now even though the amendment itself would not be filed until after the present application is approved. The amendment would raise the monthly power charge for CLECs desiring to maintain existing collocation arrangements as interstate arrangements by making the monthly charge for an interstate collocation arrangement the same as the charge for an intrastate collocation arrangement. The Commission should reject this proposal since it is a request for approval of an amendment to Verizon's interstate tariffs without complying with the statutory tariff review process, not a request to terminate service. Section 203 of the Communications Act, not Section 214, establishes the procedure that must be used if Verizon wants to amend an interstate tariff in order to increase the power charge for interstate collocation arrangements.

While unavailing, Verizon's request for approval of a power charge increase for existing interstate collocation arrangements through an application filed under Section 214 rather than through the Section 203 tariff review process is understandable since the

company already has tried unsuccessfully to increase the power charge through the Section 203 tariff review process. Last year, Verizon filed tariff amendments in accordance with the Section 203 tariff review procedure that would have increased -- by the same amount that the company proposes in the present Section 214 application -- the DC power charge applicable to existing interstate collocation arrangements. In light of serious questions about whether Verizon had shown that the price increase is lawful, the Commission ordered a hearing on lawfulness.¹ Prior to conclusion of the hearing, but after Verizon had submitted its direct case and Verizon's opponents had submitted their response, Verizon filed a motion to withdraw the tariff revisions and to refund increased power charges that CLECs had paid under the revised tariff. The Commission granted that motion and terminated its investigation since reinstatement of the power charges presently in effect "resolve[ed] all the issues under investigation" ²

III. Even If Section 214 of the Act Established the Procedure that Verizon Should Use to Obtain Permission to Increase the Price of Existing Interstate Collocation Arrangements, Verizon Has Failed to Meet Its Burden of Proof Under Section 214 to Apply the Increased Price to NAS

Even if Section 214 established the mechanism by which Verizon could obtain Commission authorization to increase the price of the services that Verizon must supply in order to keep an existing interstate collocation arrangement in operation (which it does not as explained above), the FCC still should not permit Verizon to raise the price of these services to NAS since raising the price as proposed would violate the "public convenience and necessity" as that term is used in Section 214. In the past, the

¹ *Bell Atl. and Verizon Tel. Companies Revisions for Tariff F.C.D. Nos. 1 and 11* (Transmittal Nos. 1373, 1374, 23 and 24), 16 FCC Rec. 8901 (2001) (suspending tariff amendments and ordering investigation); DA 01-1525 (Com. Car. Bureau, rel. June 26, 2001 (designating issues for investigation).

² 16 FCC Rec. 17572 (2001).

Commission has denied grant of an application filed under Section 214 as to a specific customer if grant as to that customer would leave the customer with no viable options to obtain an essential service.³ Grant of the present application as to NAS would leave NAS with no viable options to obtain the collocation arrangements that are essential for it to provide service to its customers since Verizon is the only source for those arrangements and since the price increases it asks the FCC to approve would threaten NAS's ability to continue operating as a viable concern. Early this summer, NAS filed a petition under Chapter 11 of the Bankruptcy Code for protection from creditors as it seeks to re-organize its business.⁴ While the company's revenue is now sufficient to remain viable under the present level of expense, it may not be sufficient to remain viable if Verizon's application is granted since grant of that application would increase NAS's total operating expenses by such a significant amount that it would threaten NAS's ability to continue operating. We estimate those proposed increases below. The attached affidavit of James Aust explains how our estimates were derived.

In accordance with the NAS/Verizon interconnection agreements, NAS has subscribed to 298 collocation arrangements under Verizon's interstate tariffs. NAS uses these 298 collocation arrangements in order to provide DSL service to about 20,000 end user lines throughout Verizon's service territory. One hundred thirty six of the NAS collos are powered with two feeds of 60 fused amps of power while each of the remaining 162 collos is powered with two feeds of 30 fused amps of power. NAS

³ See, e.g., *e.spire Application to Discontinue Domestic and Int'l Telecom. Services*, , DA 02-1911 (rel. Aug. 2, 2002)(prohibiting e.spire from discontinuing service on the proposed termination date to customers that had no viable options for replacement service since "preventing harm to consumers caused by a discontinuance of service . . . must be our first and highest priority").

⁴ *In re Network Access Solutions Corp.*, Case Nos. 02-11611 and 02-11612 (Dist. of Del., filed June 4, 2002).

requires 60 amp feeds in 136 collos but only 30 amp feeds in the remaining collos because it powers different kinds of equipment in the two different types of collos. NAS requires two power feeds in all 298 collos in order to provide the redundancy that is necessary to offer secure and reliable DSL service to its customers.

Verizon's application requests that the FCC authorize the company to require that a CLEC with an existing interstate collocation arrangements select one of two options in order to keep the existing arrangements in operation. Each of these options threatens NAS's economic viability.

Under the first option, Verizon's interstate tariffs would continue to set forth the terms under which it provides services to an existing interstate collocation arrangement, but Verizon would amend those tariffs in order to increase several charges, including the monthly charge for supplying the power necessary to operate the CLEC's equipment in the collocation arrangement. The proposed amendment would increase these charges to the level contained in Verizon's tariffs on file with state public utility commissions. NAS projects that its monthly charge for power alone would increase about \$240,000 per month for all 298 NAS collocation arrangements combined. The company believes it might be unable to continue operations with this major increase in monthly operating expense.

While Verizon's application does not make this clear, Verizon has informed NAS verbally that NAS might be able to reduce the price increase for power under this option by changing the manner in which the increased charge applies, but even if that is so NAS estimates that it still would be forced to pay an additional \$75,000 in power charges each month to maintain its 298 existing interstate collocation arrangements in operation.

There is a serious risk that NAS still would be forced to discontinue operations if it were required to pay an extra \$75,000 in monthly power charges.

The second option that Verizon offers is even worse for NAS than the first. Under the second option, a CLEC with an existing interstate collocation arrangement could convert that arrangement to an intrastate collocation arrangement and thereby pay all monthly recurring charges in accordance with the price schedules set forth in Verizon's intrastate tariffs. This option is a worse deal for NAS than option 1 since NAS not only would be required to pay the substantially higher price for power discussed above, it also would have to pay the significantly higher space rental charge contained in Verizon's state tariffs than the space rental charge that NAS now pays under its interconnection agreements. NAS's 298 interstate collocation arrangements contain an average of 100 square feet of floor space each, for a total of 29,800 square feet. Under its interconnection agreements, NAS is required to pay \$2.04 per month in floor space rental for each square foot of space, for a total of about \$61,000 per month. NAS estimates that under Verizon's state tariffs, the monthly charge for floor space rental would be roughly 50 percent higher than the \$61,000 that the company must presently pay each month.

CONCLUSION

For the reasons discussed above, the Commission should reject Verizon's application.

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NETWORK ACCESS SOLUTIONS
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Dated: September 18, 2002

AFFIDAVIT

1. My name is James Aust. I am Vice President of Engineering for Network Access Solutions ("NAS"). NAS is a competitive local exchange carrier ("CLEC"). NAS provides DSL service using unbundled network elements ("UNEs"). NAS connects its UNEs to its DSL equipment. NAS has placed this equipment inside of 298 Verizon central offices. NAS obtained all 298 central office collocation arrangements pursuant to Verizon's interstate tariffs.
2. The purpose of this affidavit is to estimate how much more NAS would be required to pay Verizon to maintain its existing 298 collocation arrangements if Verizon's application is *granted*.
3. NAS's 298 collocation arrangements are of two types. NAS uses 136 of its collocations to aggregate network traffic from other collos. Each of these 136 traffic aggregation collos is powered with two feeds of 60 amp. power. Each of the remaining 162 collocation arrangements is powered with 2 feeds of 30 amp. power. NAS requires 60 amp. feeds in its traffic aggregation collos but only 30 amp power feeds in the remaining collos because it needs to power different kinds of equipment in the two different types of collos. NAS requires two power feeds in all 298 collos in order to provide the redundancy that is required to offer secure and reliable DSL service to its customers.
4. In its application, Verizon asks the FCC to authorize it to give CLECs with existing interstate collocation arrangements two choices: either convert the existing collos to intrastate collocation arrangements or maintain the existing arrangements as interstate collos but pay a monthly recurring charge for the DC power that Verizon provides in order for the CLEC to operate its collocated equipment equal to the monthly recurring charge for DC power that is

reflected in Verizon's intrastate tariffs. Both options would result in substantially higher collocation costs for NAS as shown below.

5. If NAS does not convert its existing interstate collocation arrangements to the rates, terms, and conditions of a state tariff, the cost for rent in each of NAS's 162 collocation arrangements not used to aggregate traffic would remain constant, but NAS estimates that the cost of power for a typical collocation arrangement of this type would increase about 176%. Under this scenario the overall cost of a physical collocation arrangement of this type would more than double. If NAS opted to convert this arrangement to an intrastate collocation arrangement (in Massachusetts, Tariff #17, for example) rent would increase to \$333 per 100 square foot arrangement, an increase of about 50 percent from current rent, AND power would increase by about 176% per month. Under this scenario the overall cost of the physical collocation arrangement would increase approximately 130%. The following charts show NAS's present costs in two specific collocation arrangements:

**Physical Collocation Arrangement in a Central Office
Where NAS Does Not Aggregate Traffic**

FCC # 11 Current Bill		Rent	Power	Total
WRCSMACE	Worcester, MA			
	Physical Colo 100 sq.ft. @ 2.04 per ft.	\$204.00		
	Fused 30 amp A & B feeds 60 @ 4.88 per amp		\$292.80	
				\$496.00

FCC # 11 Current Bill		Rent	Power	Total
MYNRMAWA	Maynard, MA			
	Physical Colo 100 sq.ft. @ 2.04 per ft.	\$204.00		
	Fused 60 amp A & B feeds 120 @ 4.88 per amp		\$585.60	
				\$789.60

6. NAS's collocation costs would increase even more for the 136 collocation arrangements used by the company to aggregate traffic. If NAS does not convert an existing

arrangement of this type to the rates, terms, and conditions of a state tariff, then the cost for rent would remain constant, but the cost of power would more than double -- \$1,821.60 per month. Under this scenario, the overall cost of a typical physical collocation arrangement of this type would increase more than 150%. If NAS opted to convert these arrangement to a state tariff (in Massachusetts, Tariff #17, for example) rent would increase to \$333.00 per 100 square foot arrangement AND power would more than double. Under this scenario the overall cost of a typical physical collocation arrangement of this type would increase by more than 170%. The following chart shows NAS's actual DC power and rent costs for typical collocation arrangements of this type.

Physical Collocation Arrangement Used to Aggregate NAS Traffic⁵

		Rent	Power	Total
MA # 17				
WRCSMA	Worcester, MA			
Grand				
fathered	Physical Colo 100 sq.ft. @ 2.04 per ft.	\$204.00		
	Fused 30 amp A & B feeds 40amp load			
	@ 20.24 per amp		\$809.60	
				\$1,013.60
MA # 17				
MYNRMAWA	Maynard, MA			
Grand				
fathered	Physical Colo 100 sq.ft. @ 2.04 per ft.	\$204.00		
	Fused 60 amp A & B feeds 90amp load			
	@ 20.24 per amp		\$1,821.60	
				\$2,025.60

⁵ In developing both illustrative tables below, NAS converted the MRC for power to "Load Amps", consistent with the conversion outlined in the Verizon 214 filing. Verizon claims that it would assess the load amps for each collocation space based on the fused amps (i.e., a user of 60 amps of combined DC power, would be assessed at 60 amps of load power, and charged accordingly). In NAS examples, load totals 20 amps since the power arrangement that NAS uses (i.e., Dual Power Feeds) require NAS to order a 20 amp load on the "A" Feeder and 20 amp load on the "B" Feeder. These examples do not include the additional MRC for collocation floor space which would be required if converted to the State Tariff. The MRC increase would be an additional \$129.00 per location in each of NAS' 300 locations.

MA # 17		Rent	Power	Total
WRCSMACE	Worcester, MA			
	Physical Colo 100 sq.ft. @ 3.33 per ft. metro	\$333.00		
	Fused 30 amp A & B feeds 40amp load @ 20.24 per amp		\$809.60	
				\$1,142.60

MA # 17		Rent	Power	Total
MYNRMAWA	Maynard, MA			
	Physical Colo 100 sq.ft. @ 3.33 per ft. metro	\$333.00		
	Fused 60 amp A & B feeds 90amp load @ 20.24 per amp		\$1,821.60	
				\$2,154.60

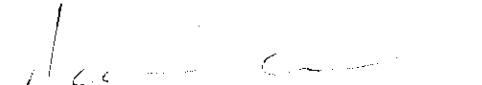
7. After reviewing the cost increases that would result in the discontinuance of the Physical Collocation Space from the FCC Tariffs, NAS contacted Verizon for clarification on the DC Power charges. While not included in the application, NAS was informed that it could take advantage of the method in which Verizon calculates the power fuses based on the Load Amps specified by the CLEC Collocator. In essence, Verizon stated that it engineers the fusing to a collocation at 2.5 times the Load Amps specified on the collocation applications. This translates, if NAS asked for two power feeds (1A & 1B), to 12 load amps on each feed; Verizon would deliver the two power feeds with 30 amp fuses. But even when taking into account the 2.5X load factor orally conveyed to NAS, NAS still would

experience increases of more than 60% over the baseline examples which are currently being billed under the FCC Tariff # 11.

MA # 17		Rent	Power	Total
WRCSMACE	Worcester, MA			
	Grandfathered Physical Colo 100 sq.ft. @ 2.04 per ft.	\$204.00		
	Fused 30 amp A & B feeds 24amp load			
	@ 20.24 per amp		\$485.76	
				\$689.76

MA # 17		Rent	Power	Total
MYNRMAWA	Maynard, MA			
	Grandfathered Physical Colo 100 sq.ft. @ 2.04 per ft.	\$204.00		
	Fused 60 amp A & B feeds 46amp load			
	@ 20.24 per amp		\$931.04	
				\$1,135.04

I affirm that the foregoing facts are accurate to the best of my knowledge,
information and belief.


James Aust

Subscribed and sworn to before me this 17 day of September, 2002.



CERTIFICATE OF SERVICE

I, Kerryn T. Rowe, a secretary at the law firm of Shook, Hardy & Bacon, LLP, do hereby certify that on this 18th day of September, 2002, I have caused to be delivered, by hand, copies of the foregoing "**Opposition of Network Access Solutions Corporation**" to the following:

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